

## NOTICE OF INTENT

Department of Environmental Quality  
Office of the Secretary  
Legal Affairs Division

Transportation Conformity  
(LAC 33:III.1432, 1434, 1435, and 1437) (AQ302ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.1432, 1434, 1435, and 1437 (Log #AQ302ft).

This proposed rule is identical to federal regulations found in 40 CFR 93.105, 122(a)(4)(ii), and 125(c), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3471 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the proposed rule. This rule will be promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This rule amends the transportation conformity regulations to fulfill the requirements in the Clean Air Act (CAA), as amended by the August 10, 2005, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Transportation conformity is required under the CAA to ensure that federally supported highway and transit project activities conform to the purpose of the air quality state implementation plan (SIP). EPA promulgated regulations that revise the transportation conformity rule to address the changes that SAFETEA-LU made to the CAA. These changes require a state to include criteria and procedures for consultation, enforcement, and enforceability in the state's transportation conformity SIP. This rule also updates the incorporation by reference in LAC 33:III.1432 and amends an incorrect citation. The EPA promulgated 40 CFR 51.390 on January 24, 2008, to streamline the requirements for state transportation conformity SIPs. Previously, a state was required to address the entire federal conformity rule requirements found in 40 CFR 93. Under SAFETEA-LU, a state is only required to address 40 CFR 93.105, 122(a)(4)(II), AND 125(c). This rule is also being proposed as a revision to the state implementation plan (SIP) for transportation conformity. The basis and rationale for this rule are to update the Louisiana transportation conformity regulations to align with the federal regulations. This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on February 26, 2009, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. The hearing will also be for the revision to the State Implementation Plan (SIP) to incorporate this proposed

rule. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Christopher A. Ratcliff at the address given below or at (225) 219-3471. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ302ft. Such comments must be received no later than February 26, 2009, at 4:30 p.m., and should be sent to Christopher A. Ratcliff, Attorney Supervisor, Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3398 or by e-mail to [chris.ratcliff@la.gov](mailto:chris.ratcliff@la.gov). The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ302ft. This regulation is available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

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Executive Counsel

**Title 33**  
**ENVIRONMENTAL QUALITY**

**Part III. Air**

**Chapter 14. Conformity**

**Subchapter B. Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved under Title 23 U.S.C. or the Federal Transit Act**

**§1432. Incorporation by Reference**

A. 40 CFR Part 93, Subpart A, July 1, 2008~~5~~, is hereby incorporated by reference with the exclusion of Sections 105, 122(a)(4)(ii), and 125(c).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 24:1280 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:697 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:640 (March 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:808 (May 2006), LR 35:\*\*.

**§1434. Consultation**

A. – C.1.e. ...

f. the MPO shall notify the agencies specified in Paragraph B.2 of this Section of transportation plan or TIP ~~revisions or amendments which that~~ merely add or delete exempt projects listed in 40 CFR 93.126 or 93.127 (as incorporated by reference in LAC 33:III.1432), and allow a 30-day comment period; and

C.1.g. – D.4. ...

E. Public Consultation Procedures. Consistent with the requirements of 23 CFR 450.316~~(a)~~, relating to public involvement, affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process that provides opportunity for public review and comment. This process shall, at a minimum, provide reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and before taking formal action on conformity determinations for all ~~TP~~transportation plans and TIPs. Any charges imposed for public inspection and copying of conformity-related materials shall be consistent with the fee schedule contained in 49 CFR 7.439~~5~~. In addition, any such agency must specifically address in writing any public comments claiming that known plans for a regionally significant project that is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. Any such agency shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:1278 (November 1994), repromulgated LR 24:1280 (July 1998), amended LR 24:1684 (September 1998), repromulgated LR 24:1925 (October 1998), amended by the Office of Environmental

Assessment, Environmental Planning Division, LR 26:2451 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2085 (October 2007), LR 35:\*\*.

**§1435. Commitments for Regional Emissions Analysis**

A. In accordance with 40 CFR 93.122(a)(4)(ii), prior to making a conformity determination on the transportation plan or TIP, the MPO, where one exists, or the MPO's designee, shall not include emissions reduction credits from any control measures that are not included in the transportation plan or TIP, and that do not require a regulatory action in the regional emissions analysis used in the conformity analysis unless the MPO, where one exists, or the MPO's designee, or the FHWA/FTA obtains written commitments, as defined in 40 CFR 93.101, from the appropriate entities to implement those control measures. The written commitments to implement those control measures must be fulfilled by the appropriate entities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:\*\*.

**§1437. Commitments for Project-Level Mitigation and Control Measures**

A. In accordance with 40 CFR 93.125(c), prior to making a project-level conformity determination for a transportation project, the FHWA/FTA must obtain from the project sponsor and/or operator written commitments, as defined in 40 CFR 93.101, to implement any project-level mitigation or control measures in the construction or operation of the project identified as conditions for NEPA process completion. The written commitments to implement those project-level mitigation or control measures must be fulfilled by the appropriate entities. Prior to making a conformity determination of the transportation plan or TIP, the MPO, where one exists, or the MPO's designee, shall ensure that any project-level mitigation or control measures are included in the project design concept and scope, and are appropriately identified in the regional emissions analysis used in the conformity analysis. Written commitments must be obtained before such mitigation or control measures are used in a project-level hot-spot conformity analysis for a project-level determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:\*\*.